

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**PAULA ROE-MIDGETT, Individually and
as Collective Action and Class Action
Representative and PAUL DECKER,
Individually and as Collective Action and
Class Action Representative**

Plaintiffs,

v.

CC SERVICES, INC.,

Defendant.

Case No. 04-cv-4051-DRH

ORDER

HERNDON, District Judge:

Defendant has filed a Motion to Modify the Record on Appeal (Doc. 123) in this case. Defendant's Motion concerns Plaintiff's Designation of Record on Appeal (Doc. 122) – specifically requesting the Record on Appeal also include “every exhibit and attachment to every documents identified in Plaintiff's Designation . . .” (Doc. 123, p. 2). Defendant makes this request pursuant to **Federal Rule of Appellate Procedure 10(e)**.

The Court notes that **Seventh Circuit Rule 10(a)** lists the specific items *not* included in the record on appeal. Therefore, all other items are automatically included, notwithstanding the items listed in the Designation of the Record. The purpose of the Designation is for the items not typically included on the Record, as

listed in **Circuit Rule 10(a)**. Although **Circuit Rule 10(a)** lists “briefs and memoranda,” as items typically not included on the Record, this does not regard memoranda, exhibits and attachments thereto filed in support or in opposition of a *motion*. Further, **Circuit Rule 10(a)** also states that the clerk of the district court shall prepare the record of appeals, including “exhibits received or offered in evidence . . . to the extent that it is tendered to the district court in support of a brief or motion . . . these materials may be designated as part of the record on appeal without the need for a motion under Fed. R. App. P. 10(e).” Lastly, the Court observes that **Federal Rule of Appellate Procedure 10(a)** states that “original papers and exhibits filed in the district court . . .” shall constitute the record on appeal.

Accordingly, the exhibits and attachments Defendant seeks to secure as part of the designation of record on appeal, are, pursuant to the Federal Rules of Civil Procedure as well as the Seventh Circuit Rules, already included as part of the record. Therefore, the Defendant’s Motion (Doc. 123) is hereby **FOUND TO BE MOOT**.

IT IS SO ORDERED.

Signed this 22nd day of August, 2006.

/s/ David RHerndon
United States District Judge